IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.911 OF 2005

1. Sampat Laxman Jadhav
Age : 21 yrs, Occu : Mason
R/o.Tilak square, Wadar Galli,
Barshi, District Solapur

2. Prashant Laxman Jadhav
Age : 25 yrs, Occu : Mason ..Appellants
R/o.Tilak square, Wadar Galli,
Barshi, District Solapur

3. Shivaji Laxman Jadhav
Age : 19 yrs, Occu : Rickshaw driver
R/o.Tilak square, Wadar Galli,
Barshi, District Solapur

V/s.

The State of Maharashtra ..Respondent

Mr.V.V.Purwant for appellants
Mr.U.V.Nikam, A.P.P. for respondent
Mr.A.P.Kulkarni for the complainant and injured persons

Coram : A.S.OKA, J.
Date on which judgment is reserved :21st December,2006
Date on which judgment is pronounced :12th January,2007

ORAL JUDGMENT

1. The Appellants (accused No.1 to 3) have

taken exception to the Judgment and Order dated 27th September, 2005 passed by the learned 3rd Ad-hoc Additional Sessions Judge, Solapur by which they have been convicted for the offence under Section 307 read with Section 34 of the Indian Penal Code. The Appellants have been sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.300/- each. In default of payment of fine, the Appellants have been sentenced to undergo rigorous imprisonment for two months. Affidavits dated 27th November, 2006 have been filed by Ramling Pandhari Jadhav and Satish Bapu Deokar who are the victims of the offence. On the basis of the said affidavits, a prayer was made by the Advocate for Appellants that this Appeal may be immediately taken up for final hearing. The learned Additional Public Prosecutor has consented to the said prayer.

2. According to the prosecution case, on 31st January, 2004 at 8.00 p.m., one Ramling Pandurang Jadhav was attending a function at Tilak Chowk, Barshi. After the function, the accused No.1 (Appellant No.1) told him to erect a cut out of one

Raju Raut. However, said Ramling declined to do so. Around 8.30 p.m. said Ramling returned back to his house. On the way back, he had exchange of words with the accused No.1. At about 9.30 p.m. the accused Nos.1 to 3 (Appellants) visited the house of the said Ramling Jadhav. They called Ramling Jadhav out of the house. Ramling Jadhav was called out of the house under the pretext that the accused No.1 was desirous of tendering an apology to him. After Ramling Jadhav came out, the accused No.1 by bending down pretended to touch the feet of the said Ramling Jadhav and while doing so the accused No.1 took out a Kukari from pocket of his trouser and gave a blow by the said Kukari on the left side of the stomach of the said Ramling Jadhav. When Ramling Jadhav's wife raised a hue and cry, the accused No.1 dealt the second blow by Kukari on the back of the said Ramling Jadhav. Hearing cries of Ramling Jadhav's wife, Ramling Jadhav's son-in-law, Satish Bapu Deokar rushed to the spot. The accused Nos.2 and 3 caught hold of said Satish Deokar and the accused No.2 inserted a Sword in the stomach of said Satish Devkar. The

accused Nos.2 and 3 fled away along with the weapons. The learned Trial Judge held that the accused Nos.1 to 3 in furtherence of their common intention caused hurt to Ramling Jadhav and Satish Devkar and attempted to commit their murder.

3. The learned Advocate appearing for the Appellants submitted that the prosecution could not establish the presence of any motive on the part of the Appellants to commit the offence. He submitted that the evidence of defence witness Hitendra Bhirud who was an officer of the Maharashtra State Electricity Board established that there was no electricity in the area at the relevant time when the offence was allegedly committed. He submitted that P.W.1 (daughter of Ramling Jadhav) expressed ignorance regarding the location of place of incident. He submitted that there is evidence on record to show that the complaint was filed by the Appellants against the said Ramling Jadhav and his wife regarding their illicit liquor business. He submitted that there was a political rivalry between the complainant and present Appellants. He

submitted that there was complete absence of any intention and knowledge on the part of the Appellants. He submitted that there was no evidence on record to show that there was any intention on the part of the Appellants to cause such injuries as are sufficient to cause the death of the injured. He relied upon the affidavits filed by Shri Ramling Jadhav and Shri Satish Devkar and submitted that in view of the settlement between the parties, the Appellants deserve to be let off on the sentence which is already under gone. He placed reliance on the various decisions of this Court and Apex Court. A reference to the decisions is made in the later part of this Judgment.

4. The learned A.P.P. supported impugned Judgment and Order and stated that in view of the depositions of the injured persons no interference is called for. He pointed out that the evidence of the Medical Officer establishes that the injuries sustained by the injured were sufficient in ordinary course to cause death. He submitted that

it was obvious that the Appellants had full knowledge that the injuries caused by them by Kukari and Sword were sufficient to cause death. Shri.A.P.Kulkarni appearing for the injured persons stated that after the conviction, the families of the Appellants and families of the injured have established cordial relationship and the members of the families have extended invitations to each other for family functions. He submitted that the Appellants may be let-off on the sentences which are already undergone.

5. I have considered the submissions. The offence under Section 307 of the Indian Penal Code is obviously not a compoundable offence. My attention has been invited to the decision of the learned Single Judge of this Court in the case of **Sarjerao Shamrao Dhas & Ors. Vs. State of Maharashtra, (2003 ALL MR (Cri) 219)**. The said decision has been delivered in an appeal against the order of conviction where the Appellants were convicted for the offence under Section 307 read with Section 34 of the Indian Penal Code. The injured witnesses filed affidavits before the

learned Single Judge of this Court stating that they were residing amicably and peacefully in the village and they desire to settle the matter amicably with the appellants. In paragraphs 3 to 5 of the Judgment,the learned Single Judge held thus:-

"3. However,it is seen that the appellants/accused have been mainly convicted under section 307 of IPC which is a non-compoundable offence, hence, I cannot acquit the appellants/accused persons on the basis of the said compromise. However, useful reference may be made to the case reported in **1995 Supp (4) SCC page 631 Salim and others V/s. State of M.P**. wherein similar facts arose. In the said case, the appellants were convicted under section 307 read with 34 IPC.

> The Apex Court had observed thus :-
> "We cannot acquit the accused persons on the basis of the compromise. However, as held by this Court in Ram Pujan and other V/s State of U.P. the fact that they have compromised the matter and have patched up their differences and the fact that since then they have been living together happily, has relevance so far as the question of sentence is concerned."

The Hon'ble Apex Court after having been satisfied of genuineness of the compromise allowed the appeal and directed that the sentence should be altered to that already undergone.

4. In the present case also, the appellants have been convicted mainly under section 307 of IPC. The facts in the present case and those in the case of **Salim**(supra) are similar. I am also inclined to pass similar order with the view that henceforth no untoward incident takes place and that the appellants and injured witnesses will live in peace and harmony in the village.

5. In this view of the matter, appeal of the appellants is partly allowed. The conviction on all counts is confirmed, however the sentences are reduced to that already undergone by them. The bail bonds shall stand cancelled."

A reliance is also placed on a decision of the Apex Court in the case of **SURENDRA NATH MOHANTY AND ANOTHER Versus STATE OF ORISSA((1999) 5 Supreme Court Cases 238).** The Apex Court was dealing with a case where the conviction of the Appellants was for offences under Sections 326, 325, 324 read with Section 34 of the Indian Penal Code. There was a compromise between the Appellant and injured persons. In paragraph 7 of its Judgment, the Apex Court held thus :-

"We reiterate that the course adopted in Ram

> Pujan v. State of U.P. and Mahesh Chand v. State of Rajasthan was not in accordance with law. However, considering the fact that the parties have settled their dispute outside the court and the fact that 10 years have elapsed from the date of the incident and the further fact that the appellants have already undergone 3 months' imprisonment as per the sentence imposed on them, we think that the ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs.5000/- on each of the accused under Section 326 read with Section 34 IPC. We reduce the sentence as indicated above and direct that in default of payment of fine, the appellants concerned shall undergo simple imprisonment for a further period of three months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs.9000/- also be paid to the injured as compensation."

Another learned Single Judge of this Court in Criminal Revision Application No.370 of 2004 (Shoukat Ismail Shaikh & Another versus The State of Maharashtra & Another) by order dated 23rd March, 2005 adopted a similar course where revision applicants before this Court were convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code. In the said case, the revision applicants were sentenced to suffer rigorous imprisonment for five years. On the basis of a settlement between the accused and

the injured, the learned Single Judge of this Court has altered punishment to one which was already undergone by the revision applicants.

6. The injured person Shri Ramling Jadhav has filed an affidavit dated 27th November, 2006. In paragraphs 6 to 10 of the said affidavit he has stated as under :-

> "I say that after conviction the accused and pending the appeal, the relation between the two families have become cordial. Both the families are residing in the same locality. However, neither any of the appellants nor anybody on their behalf had ever threatened us on account of the aforesaid proceedings.
>
> I further say and submit that both the family members are also participating in various functions. Both the families also exchange invitation for even family function etc.
>
> I further say and submit that as on today neither myself nor my son-in-law nor anybody from our family have any grievance of whatsoever nature against the appellants or their family members. On the contrary, as already stated above we have already buried our grievances once and for all. I say that the meeting of our minds or compromise arrived at between the two is bona fide and without any fear or pressure.
>
> I further say and submit that even after released on bail, the appellant No.3 had also never threatened us in any manner or pressurized us.

> I thus say and submit that in view of the subsequent development, I will not have any objection of whatsoever nature in case the appellants have been acquitted from the said case or the sentence awarded by the learned Trial Court is reduced to the extent of already undergone by them. I will also not have any objection in case the appellant Nos.1 and 2 are also released on bail pending the aforesaid appeal."

A similar affidavit has been filed by the other injured Shri Satish Deokar.

7. The Appellants were on bail throughout the trial. The Appellants were taken in custody on 27th September, 2005. On 28th October, 2005, this Court granted bail in favour of the Appellant No.3. However, prayer for bail made by the Appellant Nos.1 and 2 was rejected with liberty to file a fresh application annexing all the relevant documents. Accordingly, a Criminal Application No.24/2006 was filed by the Appellant Nos.1 and 2 which is pending. Thus, Appellant Nos.1 and 2 have undergone sentence at least for one year and three months and the Appellant No.3 has undergone the sentence at least for one month. The allegation of the prosecution as regards the actual assault by

use of weapons is against Appellant Nos.1 and 2. The Allegation against the Appellant No.3 is that he caught hold of the injured Satish Deokar along with the Appellant No.2 and thereafter, an assault made by using Sword by the Appellant No.2. The fine amount has been already deposited by the Appellants.

8. The affidavits filed by the injured persons show that there is a settlement between the Appellants and the said injured persons. The injured persons and families of the Appellants have established a cordial relationship and affidavits disclose that the families are staying in the same village. After having considered the evidence it is very difficult to upset the order of conviction. However, considering the settlement and the period of sentences already undergone by the Appellants, this is a fit case where the approach adopted by the learned Single Judges of this Court in the aforesaid cases deserves to be adopted and the Appellants deserve to be let-off on the sentences which is already undergone by them.

9. Hence, appeal is disposed of by passing the following order.

O R D E R

A. The impugned Judgment and Order of conviction of the Appellants is confirmed.

B. However, the order of sentence is modified and it is directed that the substantive sentence of the Appellants is reduced to the period of sentence which is already undergone by the Appellants.

C. Appeal is partly allowed in above terms.

JUDGE